



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION

FOP/162449

The attached proposed decision of the hearing examiner dated January 20, 2015, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

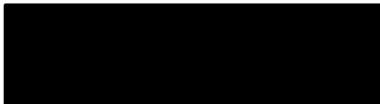
Pursuant to a petition filed December 5, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephone hearing was held on December 30, 2014, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 10 days for the submission of additional information.

The issues for determination are: (1) Whether the Department correctly determined that the petitioner was overpaid \$1,227 of FS in the period of August, 2013 – July, 2014, due to client error; and (2) Whether the Department correctly determined that the petitioner was overpaid \$644 of FS in the period of August – November, 2014, due to client error.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, HSP
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was receiving FS as a one person household in the periods of August, 2013 – July, 2014; and August – November, 2014.
2. On October 20, 2014, the Department received an auto-populated alert from the State Wage Record (“SWR”) of the Wisconsin Department of Workforce Development indicating that the petitioner had earnings far in excess of that which she had previously reported. Rather than review the matter using averaged earnings from the quarterly database in the SWR, the agency issued a verification request to the petitioner and her employer of record on that date, and demanded that verification of the petitioner’s wages be provided retroactive to August, 2013, to the present, by October 30, 2014.
3. No verification was received on behalf of the petitioner by October 30, 2014.
4. On November 11, 2014, the Department issued a FoodShare Overpayment Notice and worksheets demonstrating calculations to the petitioner informing her that she had been overpaid \$1,227 in the period of August, 2013 – July, 2014, i.e., her complete FS issuance in that period. While the calculations utilized averages derived from the State Wage Record, no actual computation of eligibility was performed. Rather, household composition was changed to reflect “0” as the household size, rendering the household completely ineligible for any FS in the tested period. The Notice stated that the overpayment was due to a client error in reporting earnings.
5. On the same date, the Department issued a second FoodShare Overpayment Notice and worksheets for the August – November, 2014, performing the same process as described in Finding of Fact #4, above, and informing the petitioner she was overpaid \$644 of FS in that test period, i.e., all FS issued to her in the test period, due to a client error in reporting earnings.
6. On December 5, 2014, the petitioner filed an appeal with the Division of Hearings & Appeals contesting both overpayment determinations of November 11, 2014.
7. At the fair hearing held on December 30, 2014, the petitioner provide Employer Verification forms that she herself completed, did not sign, and had no other verification document that she provided at that time or during the 10 day open records period to otherwise prove her actual earnings.

DISCUSSION

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

For at least the past 25 years, the Department has issued, adopted and/or approved, fair hearing decisions on overpayment allowing the use of the best evidence available of household income. That best evidence has often encompassed and included averaged income based upon the quarterly income stated in the State Wage Record. In every fair hearing in that scenario, the recipient had every opportunity to rebut such a showing with actual earned income data that would reveal if the averaging overstated or understated income in any given month in the quarters so averaged. This case purportedly announces a new policy standard formulated by the Department effective October 17, 2014, in *FoodShare Wisconsin Handbook*, §1.2.6. That section concerns verification procedures, and it instructs agencies to use dated checkstubs for the past 30 days, or an earnings report or statement from the employer to verify earned income. It specifically states that the agency should not use a “IEVS” report or computer match from another state

because these have three month gross earnings amounts for the work quarter and not monthly income amounts. It states, ***“Do not use IEVS in calculations for overpayments.”***

The Department’s representative asserts that this means that the agency cannot use the estimated earnings based upon averaging of the work quarter earnings, and rather must instead consider the household simply ineligible completely, and all FS paid is overpaid when the recipient does not verify the earnings as requested. To that end, the Department changed the household composition to “0”, and rendered the petitioner ineligible in all months tested.

This is an extremely important change in procedure if what the agency asserts is the case, is in fact the Department’s policy. The FS regulations require that the FS overpayment is to be calculated by determining the “correct” amount of FS a household was entitled to receive in a be given month, minus the FS actually issued. See, 7 C.F.R. § 273.18(c)(1). In addition, no part of 7 C.F.R. §273.1 defining the “Household concept” for FS purposes contemplates a household size of “0”, expressly or implicitly. Although I acknowledge that the FS regulations are not always clear with regard to verification policy as it applies to establishing overpayments, I cannot conclude that this interpretation of the verification policy is consistent with federal regulations.

Both overpayment determinations of November 11, 2014, are therefore invalid and must be rescinded by the Department, and all recovery actions cease. Nothing prevents the agency from pursuing FS recovery premised upon a new Notice of Overpayment with a correct basis in law and fact for the claim.

CONCLUSIONS OF LAW

That the Department incorrectly determined that the petitioner was overpaid \$1,227 of FS from August 1, 2013 – July 31, 2014; and \$644 of FS from August – November, 2014 via the use of a fictional household size of “0” in both claim computations.

THEREFORE, it is

ORDERED

FS overissuance claim numbers [REDACTED] (\$1,227) and [REDACTED] (\$644) issued on November 11, 2014, are reversed and rescinded in their entirety, and the Department is to cease all collection activities based upon them. These actions are to be completed within 10 days of the date of the Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as “PARTIES IN INTEREST”. Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

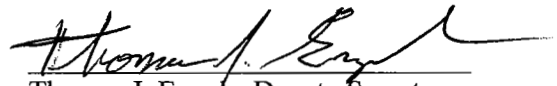
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI, 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 30 day
of April, 2015.


Thomas J. Engels, Deputy Secretary
Department of Health Services